

Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 SSO-00 NSCE-00 USIE-00 INRE-00 CIAE-00

DODE-00 INR-07 NSAE-00 PA-01 PRS-01 SP-02 AID-05

EB-07 NSC-05 CIEP-01 TRSE-00 SS-15 STR-04 OMB-01

CEA-01 COME-00 FRB-03 XMB-02 OPIC-03 LAB-04 SIL-01

INT-05 L-03 H-02 (ISO) W

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O 312359Z JUL 75

FM AMEMBASSY LIMA

TO SECSTATE WASHDC NIACT IMMEDIATE 6124

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EO 11652: NA

TAGS: EINV,EMIN,PFOR,PE,US

SUBJ: MARCONA EXPROPRIATION--TEXT OF AMBASSADOR'S

SUPPLEMENTARY TALKING POINTS

REF: LIMA 6101 AND 6129

FOR DELIVERY OPENING OF BUSINESS AUGUST 1

THE FOLLOWING SUPPLEMENTARY TALKING POINTS WERE ALSO
DISCUSSED WITH FONOFF SECGEN GARCIA BODOYA JULY 31 AND
GIVEN TO HIM IN WRITING:

THE FOLLOWING IS THE EMBASSY'S UNDERSTANDING OF THE CHARGES
MADE AGAINST THE MARCONA MINING COMPANY BY MINES MINISTER
GENERAL JORGE FERNANDEZ MALDONADO. THERE ARE OBVIOUS
DISCREPANCIES BETWEEN THE MINISTER'S CHARGES AND THE FACTS
AS PRESENTED BELOW. WE BELIEVE THE APPROPRIATE MEANS TO
WORK OUT THESE DIFFERENCES IS THROUGH A PROCESS OF NEGO-
TIATION.

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1. FAILURE TO ESTABLISH TEMPORARY AND NON-EXPLOITABLE RE-

SERVES (RESERVA TEMPORAL, RESERVA INTANGIBLE)
MARCONA SIGNED A CONTRACT WITH THE PERUVIAN GOVERNMENT
IN 1966 STIPULATING THAT THERE WOULD BE A RESERVE OF 70
MILLION TONS OF ORE SET ASIDE FOR CHIMBOTE. THE 1966
CONTRACT ESTABLISHED THAT MARCONA HAD UNTIL 1977 TO
PROVE THE 70 MILLION TONS FOR CHIMBOTE. MARCONA DRILLING
TO THE DATE OF EXPROPRIATION INDICATES THAT THERE
ARE APPROXIMATELY 280 MILLION TONS OF RESERVES. MARCONA HAD
TWO MORE YEARS AND EXPECTED TO PROVE OUT SUBSTANTIALLY MORE
THAN THE 70 MILLION TONS CALLED FOR IN THE 1966 CONTRACT
AS THE RESERVE FOR CHAMBOTE.

2. FAILURE TO USE UNIVERSALLY ACCEPTED MINING PRACTICES

MARCONA HAD BEEN PROVISIONING ITS FACILITIES WITH THE
MOST MODERN EQUIPMENT, AND HAD USED INTERNATIONALLY ACCEPTED
STANDARDS OF MINE OPERATIONS AND PROCEDURES. IN REGARD TO
MINE SLOPES, THE MINE WAS DESIGNED AT PIT SLOPES OF
45 DEGREES; SOME SLOPES ARE AT 52 DEGREES. THE MINE
NEVER HAS HAD A SLIDE.

3. MARCONA VIOLATED PERUVIAN LAW WHICH PROHIBITS SALES
TO BRANCHES BY REMITTING FOUR PERCENT SALES COMMISSIONS

IN 1966, THE PERUVIAN GOVERNMENT AND MARCONA AGREED THAT
THERE WOULD BE A 4 PERCENT CHARGE TO TAKE CARE OF THE
DIFFERENCES IN THE WEIGHTS AND MEASURES OF ORE LOADED
IN PERU AND ORE LANDED ELSEWHERE. THIS AGREEMENT WAS
REACHED TO PERMIT IMMEDIATE PAYMENT TO THE PERUVIAN
GOVERNMENT AT THE TIME OF SHIPMENT FROM PERU, RATHER THAN
WAITING A PERIOD OF TWO MONTHS. (THIS IS THE NORMAL PERIOD
INVOLVED IN RECONCILING THE DIFFERENCES BETWEEN THE SHIPPING
WEIGHT AND THE FINAL DELIVERY WEIGHT.)

IN 1971, THE PERUVIAN GOVERNMENT DECIDED THAT A 2 PERCENT
SALES COMMISSION WAS THE MAXIMUM ALLOWABLE. HOWEVER, THE
4 PERCENT WAS NOT SALES COMMISSION SINCE IT TAKES INTO
ACCOUNT INSURANCE, AND TONNAGE DIFFERENCES. THE 4 PERCENT
COMMISSION FIGURE ALSO INCLUDED U.S. 2 CENTS A TON WHICH
MARCONA PAID TO HAVE THE ORE SAMPLED AT DESTINATION. IN
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1971, THIS PROCEDURE WAS DISCUSSED WITH THE PERUVIAN GOVERNMENT
AND IT AGREED THAT THE PROCEDURE WAS COMPLETELY ACCEPTABLE.

4. DEMURRAGE CHARGES - ILLEGALLY CHARGED BY THE COMPANY

DEMURRAGE CHARGES ARE A NORMAL PART OF ANY OPERATION INVOLVING
SHIPPING. SHIPS MUST BE LOADED AT A FIXED RATE AT A GIVEN
NUMBER OF TONS PER HOUR. MARCONA INTERNATIONAL THEREFORE

CHARGED MARCONA MINING COMPANY AN AMOUNT OF APPROXIMATELY \$700,000 PER MONTH. HOWEVER, THESE MONIES WERE NEVER REMITTED OUTSIDE OF PERU BUT WERE CARRIED AS AN OPERATING EXPENSE OF THE COMPANY. THESE CHARGES WOULD BE CHARGED BY ANY SHIPPING COMPANY IF THE SHIP IS HELD UP, BUT WILL NOW BE PAYABLE IN FOREIGN EXCHANGE TO THE FOREIGN COMPANIES.

5. ILLEGAL PAYMENT TO FOREIGN PERSONNEL

UNDER PERUVIAN LAW, THE MARCONA COMPANY WAS REQUIRED TO PAY BONUSES, AND IN FACT DID SO VOLUNTARILY BEFORE THE LAW REQUIRING SUCH PAYMENTS WAS ESTABLISHED.

6. FAILURE TO PAY TAXES ON SALES COMMISSIONS

SINCE THE 4 PERCENT COMMISSIONS WERE CONSIDERED TO BE LEGAL UNTIL THIS YEAR, THERE WAS NO REASON TO PAY TAXES ON THEM.

7. FAILURE TO PAY TAXES ON MARITIME SHIPPING

THIS CHARGE DOES NOT MAKE SENSE, SINCE MARCONA MINING COMPANY HAS NOT SHIPS ON WHICH A TAX COULD BE CHARGED. NEITHER WOULD THE PERUVIAN GOVERNMENT BE IN A POSITION TO TAX ANY FOREIGN SHIPPING COMPANY, WHETHER IT BE MARCONA INTERNATIONAL OR A THIRD-PARTY SHIPPING COMPANY.

8. DEBT FOR DEPLETION ALLOWANCE (LA RESERVA ILEGAL POR AGOTAMIENTO MINERO FOR S/.700 MILLION)

MARCONA WROTE OFF DEPLETION EXPENSES FORM 1953. BUT IN 1972, THE SUPREME COURT RULED THAT ITS DEPLETION RATES HAD BEEN INCORRECTLY APPLIED AND THAT THE MARCONA COMPANY THEREFORE OWED THE PERUVIAN GOVERNMENT \$19 MILLION.
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MARCONA AGREED AND WORKED OUT A FORMULA TO REPAY AND HAS BEEN DOING SO FOR APPROXIMATELY TWO YEARS. WE THEREFORE PRESUME THAT THE S/.700 MILLION FIGURE MENTIONED BY THE MINES MINISTER REFERS TO THIS AMOUNT. THERE IS NOW A QUESTION ABOUT THIS DEBT AND HOW IT WOULD CONTINUE TO BE PAID.

9. MARCONA SOLD INFERIOR ORES TO SIDERPERU

THIS IS NOT POSSIBLE SINCE THERE IS A SINGLE STOCK-PILE OF ORE WHICH IS USED TO SUPPLY ALL SHIPS. THEREFORE, CHIMBOTE RECEIVED PRECISELY THE SAME MATERIAL AS JAPAN AND OTHER COUNTRIES.

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Message Attributes

Automatic Decaptoning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: NATIONALIZATION, TEXT, DISPUTES, MINING INDUSTRY, DIPLOMATIC COMMUNICATIONS, ALLEGATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 31 JUL 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975LIMA06135
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750265-0547
From: LIMA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t1975074/aaaaadrq.tel
Line Count: 167
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION ARA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 75 LIMA 6101, 75 LIMA 6129
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 12 SEP 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <12 SEP 2003 by CunninFX>; APPROVED <20 OCT 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: MARCONA EXPROPRIATION--TEXT OF AMBASSADOR'S SUPPLEMENTARY TALKING POINTS
TAGS: EINV, EMIN, PFOR, PE, US, MARCONA MINING CO, (FERNANDEZ MALDONADO, JORGE)
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006